

## §711.15

Secretary for Defense Programs or designee for that particular purpose has determined, after considering information furnished by the investigative agency concerning the reliability of the person and the accuracy of the statement, that —

(A) The statement appears to be reliable and material;

(B) Failure of the hearing officer to receive and consider such statement would substantially harm the national security; and

(C) The person who furnished the information cannot appear to testify due to death or severe illness, or due to some other good cause as determined only by the Assistant Secretary for Defense Programs;

(4) Ensure that if the procedures in paragraph (c)(3) of this section are used, the individual is given a description of the information, which shall be as comprehensive and detailed as the national security permits. In addition, if a statement is received under paragraph (c)(3)(ii) of this section, the identity of the person making the statement and the information to be considered shall be made available to the individual. The hearing officer shall give appropriate consideration to the fact that the individual did not have an opportunity to cross-examine such person;

(5) Require the testimony of the individual and all witnesses be given under oath or affirmation;

(6) Request that the Assistant Secretary for Defense Programs issue subpoenas for witnesses to attend the hearing or for the production of specific documents or other physical evidence; and

(7) Ensure that a transcript of the certification review proceedings is made.

### **§711.15 Hearing officer's report and recommendation.**

Not later than 30 working days after the conclusion of the hearing, the certification review hearing officer shall forward written findings, a supporting statement of reasons, and recommendation regarding the individ-

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ual's suitability for certification or recertification in the PAP to the operations office manager. The hearing officer's report and recommendation shall be accompanied by a copy of the record of the proceedings.

### **§711.16 Appeal of the operations office manager's final decision.**

(a) An individual who has been denied PAP certification or recertification, or whose certification has been revoked, may appeal the operations office manager's decision to the Assistant Secretary for Defense Programs. The appeal must be sent to the Assistant Secretary for Defense Programs, by certified mail, no later than 20 working days after the individual receives the operations office manager's decision.

(b) An individual who appeals an operations office manager's decision to the Assistant Secretary for Defense Programs must submit the appeal and a written supporting statement to the Assistant Secretary for Defense Programs through the operations office manager and the Deputy Assistant Secretary for Military Application and Stockpile Management. The individual must also submit:

(1) A copy of the operations office manager's final decision and any related documentation; and

(2) If a certification review hearing was conducted, a copy of the hearing officer's report and recommendation and the record of the proceedings.

(c) Within 20 working days of the receipt of an individual's appeal and supporting documents, the Assistant Secretary for Defense Programs shall review all of the information and issue a written decision in the matter. The decision of the Assistant Secretary for Defense Programs shall be final for DOE.

(d) If an individual does not appeal to the Assistant Secretary for Defense Programs within the time specified in paragraph (a) of this section, the operations office manager's decision shall be the final decision.